

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re B.C., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

YVONNE Q.,

Defendant and Appellant.

D053610

(Super. Ct. No. J515671A)

APPEAL from a judgment of the Superior Court of San Diego County, George W. Clarke, Judge. Affirmed.

Yvonne Q. appeals a judgment terminating her parental rights to her minor daughter B.C. under Welfare and Institutions Code¹ section 366.26. Yvonne challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child

¹ Statutory references are to the Welfare and Institutions Code.

relationship exception did not apply to preclude terminating her parental rights. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2005 14-month-old B.C. became a dependent of the juvenile court under section 300, subdivisions (a) and (b) and was removed from Yvonne's custody based on findings Yvonne medically neglected B.C. and subjected her to serious physical harm. B.C. came to the attention of the San Diego County Health and Human Services Agency (Agency) when a medical examination revealed she had a ruptured eardrum, blood in her ear canal and multiple bruises and bite marks on her body, which were inflicted nonaccidentally. Yvonne had a criminal history, including alien smuggling, petty theft and robbery, and a history of drug use and gang involvement. She minimized the bite marks on B.C., was not remorseful and took no responsibility for her actions. The court placed B.C. with a maternal aunt while Yvonne participated in reunification services.

After 18 months of services, B.C. was returned to Yvonne's custody. However, in July 2007 Agency filed a supplemental petition alleging Yvonne was no longer able to care for B.C. Police found Yvonne driving a stolen car with B.C., unrestrained, on her lap. B.C. reported Yvonne's boyfriend, Oscar V., physically abused her and Yvonne. The court sustained the allegations of the supplemental petition, continued B.C. as a dependent, terminated services and set a section 366.26 selection and implementation hearing.

In its assessment report, Agency recommended the court terminate parental rights and order adoption as B.C.'s permanent plan. The social worker assessed B.C. as generally adoptable. Also, B.C.'s cousin M. and her husband Ryan, with whom B.C. lived, wanted to adopt her.

In a court-ordered bonding study, Robert Kelin, Psy.D., observed Yvonne and B.C. together and concluded B.C. had a "moderately strong bond" with Yvonne. Dr. Kelin believed it could be detrimental to B.C. if she lost contact with Yvonne.

Yvonne filed a section 388 petition for modification, seeking to have B.C. placed with her. She alleged she was participating in services, regularly visiting B.C. and had stable housing and employment. She further alleged she had a strong parent-child bond with B.C. as shown by Dr. Kelin's bonding study.

The court held a selection and implementation hearing and an evidentiary hearing on Yvonne's section 388 petition. It received into evidence the bonding study and other documentary evidence. According to addendum reports, B.C. consistently said she liked to visit Yvonne but did not want to live with her. B.C. was afraid of Oscar. During visits observed by the social worker, B.C. was parentified and very demanding of Yvonne, who allowed B.C. to take charge and make all the decisions. At the end of visits, B.C. often pouted.

The reports further noted Yvonne consistently made poor parenting decisions and focused on her own immediate need to please B.C. rather than on the long-term consequences of setting appropriate limits. B.C. did not spontaneously talk about Yvonne and she identified her current and prior caregivers as her family. B.C. expressed

fear at the idea of living with Yvonne. The social worker believed Yvonne and B.C. did not have a parent-child relationship that outweighed the benefits of adoption for B.C. B.C.'s interactions with Yvonne showed B.C. did not consider Yvonne to be someone who provided her with safety, consistency and support. Instead, she associated Yvonne with fun, and in the context of a living arrangement, with fear. Yvonne did not provide for B.C.'s physical or emotional needs, and B.C. did not trust Yvonne.

Dr. Kelin testified consistently with the contents of his bonding study. He observed a friendly and interactive relationship between Yvonne and B.C., noting Yvonne maintained a parental boundary when necessary. Based on B.C.'s strong reaction when she separated from Yvonne, Dr. Kelin concluded B.C. would be hurt if the parent-child relationship were terminated, and he believed there was a possibility that B.C. could suffer permanent emotional damage.

B.C. testified outside the presence of the parties. She identified two mothers: her former caregiver (the maternal aunt) and Yvonne. B.C. said Yvonne occasionally telephoned her, but not when she said she would. B.C. wanted to visit Yvonne "sometimes," but did not want to live with her because she did bad things, including hitting her. B.C. said she did not like living with Oscar because he was mean to her, even when Yvonne was present.

B.C.'s cousins Roberta, Vanessa and M. testified about the interactions they observed between B.C. and Yvonne. Yvonne always brought other people to visits, and often did not interact with B.C. During visits, B.C. directed the activity and did not obey Yvonne, who was unable to set limits with B.C., follow through with directions or

properly discipline her. B.C. did not like to be alone with Yvonne. She sometimes separated easily from Yvonne after visits, and other times had difficulty, depending on Yvonne's emotions. Between visits, B.C. did not cry for Yvonne or indicate she missed her, and she never asked to see or telephone her. B.C. expressed fear about the domestic violence she witnessed between Yvonne and Oscar. Following visits with Yvonne, B.C. became irritated, anxious and angry. B.C. cried only once when a visit with Yvonne ended. She occasionally had tantrums after visits or telephone calls and on several occasions, bit M.'s son. B.C. consistently said she wanted to live with M.

Yvonne's telephone calls to B.C. decreased from once a day to twice a week. B.C. sometimes did not want to speak to Yvonne and she never asked to live with her. When Yvonne was incarcerated and B.C. had no contact with her, B.C. was relaxed, calm and well-behaved. Once visits resumed, B.C. became frustrated and upset. She was very afraid of Oscar.

Social worker Bethany Schramm testified Yvonne received 18 months of reunification services and six months of maintenance services. She did not complete the individual therapy or domestic violence treatment requirements of her case plan. Schramm believed Yvonne did not have the ability to learn from services, including assessing risk to herself and others.

Schramm supervised several visits between Yvonne and B.C., noting B.C. had an insecure, anxious attachment to Yvonne, and wanted control because she could not trust Yvonne to parent her. B.C. did not act this way with M. Yvonne could not provide structure or set limits for B.C., resulting in chaotic visits. The physical abuse experienced

by B.C. caused her to have a fundamental distrust of Yvonne. In Schramm's opinion, B.C. did not have a parental relationship with Yvonne. Although B.C. knew Yvonne was her mother and at times enjoyed visits with her, any relationship they had was not beneficial to B.C. During visits, B.C. was anxious and ambivalent and was unequivocal when stating she did not want to live with Yvonne. When B.C. drew a picture of her family, it did not include Yvonne.

Dr. Kelin's report and testimony did not change Schramm's opinion regarding the lack of a beneficial relationship between B.C. and Yvonne. The bonding study was controlled, covered a brief period and did not consider the history of the relationship between Yvonne and B.C. or how B.C. interacted with other people in her life.

Schramm believed it would not be detrimental to B.C. to terminate parental rights. The benefits of adoption outweighed any detriment B.C. would experience because B.C. needed and deserved the consistency, stability and safety that an adoptive home would provide.

Supervising social worker Elizabeth Edwards, an expert on attachments and bonding, testified she independently assessed B.C.'s case. In her opinion, B.C. was highly adoptable. B.C. had an insecure attachment to Yvonne and did not see her in a parental role. Their relationship was not beneficial to B.C. Yvonne did not meet B.C.'s needs and they did not have a parent-child relationship. B.C. did not want to live with Yvonne, and she perceived her with ambivalence and uncertainty. A permanent plan of adoption would provide B.C. with stability, consistency, safety, protection and permanence, and she would not experience significant detriment if parental rights were

terminated. The results of Dr. Kelin's bonding study did not change Edwards's assessment.

After considering the evidence and hearing argument of counsel, the court denied Yvonne's section 388 petition. The court further found B.C. was adoptable and none of the exceptions to adoption applied. The court terminated parental rights and referred B.C. for adoptive placement.

DISCUSSION

Yvonne challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating her parental rights. Yvonne asserts she regularly visited B.C. as much as possible and B.C. will be greatly harmed by the loss of their relationship. In support of her assertion, Yvonne points to evidence of B.C.'s many positive visits with her, and Dr. Kelin's conclusion that B.C. has a significant attachment to Yvonne.

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is

substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of several specified exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i) - (vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn*

H., *supra*, 27 Cal.App.4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment from child to parent. (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

Here, Yvonne's visits with B.C. were sometimes consistent and sometimes sporadic. Yvonne had no visits while she was incarcerated, and after her release from jail, her telephone calls to B.C. decreased from daily to twice a week. Even were we to consider this "regular" contact, Yvonne did not meet her burden to show her relationship with B.C. was sufficiently beneficial to outweigh the benefits of adoption for her.

The evidence showed the relationship between Yvonne and B.C. was not parental. Rather, Yvonne was more like an extended family member, a "kindergarten friend," or a friendly visitor. B.C. associated Yvonne with fun. She did not see Yvonne as a parent—someone who provided safety, support and guidance—and did not trust her. Yvonne had no insight into B.C.'s needs and was unable to set limits. Consequently, B.C. became parentified. Although B.C. recognized Yvonne as her mother, she saw her past and present caregivers as her parents and relied on them to meet her needs. (See *In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827 [relationship between father and son was pleasant

and emotionally significant but was not the type of consistent nurturing that marks a parental relationship]; *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 563 [mother's relationship with children was more of a peer than a parent].)

The evidence further showed B.C. did not have a substantial, positive attachment to Yvonne. B.C. had a fundamental distrust of Yvonne and perceived her with ambivalence and uncertainty. B.C. consistently and unequivocally said she did not want to live with Yvonne. She did not like talking to Yvonne on the telephone, did not say she missed her and did not ask about her in between visits. B.C.'s behavior after visits—becoming irritated, anxious, frustrated, angry and physically aggressive—showed she had an unhealthy attachment to Yvonne. In contrast to this behavior, B.C. was relaxed, calm and well-behaved when Yvonne was incarcerated and B.C. had no contact with her. Although B.C. knew Yvonne was her mother and at times enjoyed visits with her, any relationship they had was not beneficial to B.C. (Cf. *In re S.B.* (2008) 164 Cal.App.4th 289, 294-295 [minor would be greatly harmed by loss of significant, positive relationship with father where he complied with every aspect of case plan, frequently and regularly visited the minor and was devoted to her, and where minor loved father and wanted to live with him].)

Yvonne relies on Dr. Kelin's bonding study to argue it would be detrimental to B.C. to terminate parental rights. Although Dr. Kelin believed B.C. would be hurt and possibly suffer permanent emotional damage if the parent-child relationship were terminated, the court considered other evidence to the contrary. Both social workers, who knew the history of the case, interviewed B.C.'s current and past caregivers and

observed many hours of interaction between B.C. and Yvonne and gave their expert opinions regarding the absence of a beneficial parent-child relationship. They believed B.C. would not experience significant detriment if parental rights were terminated, and the benefits of adoption outweighed any detriment B.C. would experience because she needed and deserved the consistency, stability and safety that an adoptive home would provide. The court was entitled to give greater weight to this evidence than to Dr. Kelin's opinion. We may not substitute our judgment for that of the trial court. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Substantial evidence supports the court's finding there was no beneficial parent-child relationship to preclude terminating Yvonne's parental rights.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.